

810-2-3-.16 Alternative Method of Determining Capital Employed in Alabama.
(REPEALED)

(1) *Scope.* This regulation provides for an alternative method of determining capital employed in Alabama by a taxpayer to which Section 40-14-41, Code of Alabama 1975, applies and to the related supporting statements required to be filed pursuant to Section 40-14-44. This regulation also provides a definition of the method commonly referred to as the summation method of determining capital employed in Alabama.

(2) *Definitions.* The following terms have the meanings ascribed to them for purposes of this regulation.

(a) *Apportionment formula.* The apportionment formula that is in accordance with Reg. 810-2-3-.13.

(b) *Taxpayer.* A corporation organized under the laws of any other state, nation or territory, and doing business in this state.

(c) *Petition.* A written request submitted to the Department for a departure from the required apportionment formula. The written request must include the following:

1. Evidence to support the taxpayer's contention that the apportionment formula applicable for the taxpayer would not fairly represent the actual amount of the capital employed in this state.

2. A proposed alternative method that equitably determines the actual amount of capital employed in Alabama.

3. A statement that, to the best of the taxpayer's knowledge, no identical or similar petition has been ruled on by the Department regarding the taxpayer or its predecessor. If an identical or similar petition has been made, the taxpayer must furnish the date and result of the petition. In addition, the taxpayer must include a statement about whether an identical or similar petition was submitted previously by the taxpayer or its predecessor and was later withdrawn before the Department issued its decision on the petition.

4. The following perjury declaration:

"Under penalties of perjury, I declare that I have examined this petition, including the accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the requested relief are true, correct, and complete."

The taxpayer or the taxpayer's authorized representative must sign the perjury declaration. The term "authorized representative" has the meaning ascribed to it in Section 40-2A-3(3). Changes to the petition or additional information submitted at a later date must also include the perjury declaration.

(d) *Summation Method.* The aggregate fair and reasonable market value of the items of property, both tangible and intangible, owned or used by a

foreign corporation and having a legal situs in Alabama plus other funds as are used by a foreign corporation in conducting its corporate business in Alabama at the due date of the levy. The actual amount of capital employed in Alabama as determined by the "summation method" shall include, but not be limited to the aggregate of the following:

1. Alabama receivables. Accounts and notes receivables arising from the sales of products or services in Alabama or arising from any Alabama operations of the foreign corporation, excluding any amounts to be included under 2.
2. Intercompany receivables. Accounts and notes receivables from all related corporations whose commercial domicile is in Alabama.
3. Mortgages receivable on Alabama real estate.
4. Alabama inventories. To include finished goods, raw materials, work in process, supplies and any other inventory items located in Alabama.
5. Alabama prepaid expenses. To include but not be limited to all prepaid taxes and insurance premiums applicable to property located in Alabama.
6. Amount invested in the capital stock of any corporation whose commercial domicile is in Alabama.
7. Alabama tangible property. To include all depreciable property, land, depletable property, oil and gas leases and interests in partnerships.
8. Alabama property acquired through capital lease.
9. Investment in securities issued by the state of Alabama or political subdivision thereof.
10. Investment in securities, other than capital stock, issued by entities commercially domiciled in Alabama other than those issued by the state of Alabama or political subdivision thereof.
11. Average monthly Alabama rent expense.
12. Average monthly payroll expense for all Alabama employees.
13. Average monthly Alabama operating expense, not including rent and payroll.
14. Any other assets located in Alabama and employed in Alabama activities.

(3) *Purpose.* The purpose of this regulation is to provide standards and procedures for permitting or requiring taxpayers to use an alternative method of determining the actual amount of capital employed in Alabama, rather than the method of apportionment prescribed in Reg. 810-2-3-.13, as the case may be.

(4) *Generally.*

(a) Using the procedures in paragraph (5) below, the standards that the Department adopts under this regulation are that Section 40-14-41(c) is to be interpreted to permit a departure from the apportionment formula only in specific cases. Use of an alternative method of determining the actual amount of capital employed in Alabama under Section 40-14-41(c) is appropriate only where unusual fact situations produce incongruous results under the apportionment formula by not accurately and fairly reflecting the actual amount of capital employed in Alabama. Where there are no such unusual fact situations producing incongruous results under the apportionment formula, the apportionment formula must be used. An alternative method of determining the actual amount of capital employed in Alabama may not be required or permitted, either by the taxpayer or the Department, merely because it reaches a different apportionment percentage than the regularly applicable apportionment formula or calculates a lesser or greater amount of taxable capital.

(5) *Procedures.*

(a) The party (taxpayer or Department) seeking to use an alternative method for determining the actual amount of capital employed in Alabama must show by clear and cogent evidence that the apportionment formula prescribed by Reg. 810-2-3.13 would not fairly represent the actual amount of the capital of the taxpayer employed in this state.

(b) The party (taxpayer or Department) seeking to use an alternative method must prove that the alternative method fairly and accurately determines the actual amount of capital employed in Alabama based on the particular facts and circumstances related to the taxpayer's operations, activity, and presence in Alabama.

(c) A taxpayer may file, at any time, a petition with the Department for a departure from the required apportionment method. The taxpayer may only use the alternative method for tax years beginning after approval. The taxpayer shall file the petition with the Department at the same address as required for the tax year's franchise tax return.

(d) The Department may require an alternative method of determining the actual amount of capital employed in Alabama when the apportionment formula has operated or will operate so as to subject the taxpayer to taxation on a lesser portion of its total capital than is equitably attributable to Alabama. Mere disparity among apportionment factors shall not establish or tend to establish that the apportionment formula has operated or will operate so as to subject the taxpayer to taxation on a lesser portion of its total capital than is equitably attributable to Alabama.

(6) *Alternative Methods of Determining Capital Employed in Alabama.* An alternative method of determining the actual amount of capital employed in Alabama shall only be used after a taxpayer receives approval from the Department and may be any one of the following:

(a) The exclusion of one or more of the factors or components of the factors used in the apportionment formula;

(b) The inclusion of one or more additional factors in the apportionment formula; or

(c) The employment of any other method, including, without limitation the method commonly referred to as the summation method, which effectuates an equitable determination of the actual amount of the taxpayer's capital employed in Alabama.

(7) *Informal Conference.*

(a) The Department, if it deems necessary, may schedule a conference regarding a petition. The taxpayer may also request in writing a conference. The conference shall be scheduled by the Department, which shall notify the taxpayer of the time and place at which the conference will be held.

(8) *Processing.* The Department shall process petitions in the order received.

(9) *Incomplete Petitions.*

(a) Petitions that do not comply with the requirements set out in this regulation will be returned to the taxpayer.

(b) The taxpayer shall have thirty (30) days from the date the petition was returned to modify the petition. If the taxpayer fails to return the modified petition within the thirty (30) day time period, the file will be closed. If the modified petition is returned after the thirty (30) day time period, the petition will be treated as a new petition for purposes of processing.

(10) *Petitions Retained.* If the taxpayer withdraws a petition, all exhibits and correspondence submitted with the petition or pertaining to the petition may be retained by the Department.

(11) *Modification or Revocation of Alternative Method.* After the Department grants a petition or requires the use of an alternative method, such alternative method shall remain in force until modified or revoked by the Department. Subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which the Department's decision is based may subject future transactions to different treatment than permitted by the Department in approving any petition. Any petition approved by the Department may be revoked retroactively if the petition misstated or omitted facts material to the Department's determination to approve the petition.

(12) *Effective Date.* The regulation applies to taxpayers for the franchise tax year beginning January 1, 1997, and all franchise tax years thereafter.

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